

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JUL 16 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JENNIFER M.,)	2 CA-JV 2010-0027
)	DEPARTMENT B
)	
Appellant,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC)	
SECURITY and ZAIDEN M.,)	
)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200800051

Honorable Joseph R. Georgini, Judge

AFFIRMED

Ritter Law Group, L.L.C.
By Patricia Pfeiffer

Florence
Attorneys for Appellant

Terry Goddard, Arizona Attorney General
By Eric Devany

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Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 Jennifer M., mother of Zaiden M., born in 2007, appeals from the juvenile court's order terminating her parental rights to Zaiden based on abandonment, *see* A.R.S. §§ 8-531(1), 8-533(B)(1), and length of time in care, *see* § 8-533(B)(8)(a).¹ On appeal, Jennifer asserts there was insufficient evidence to support the court's findings that she abandoned Zaiden and that she was not provided with appropriate reunification services. She also challenges the court's finding that termination of her rights was in Zaiden's best interests. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "On review, . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In April 2008, Child Protective Services (CPS) received a report that Jennifer was neglecting then four-month old Zaiden, who suffered from various health conditions related to his premature birth. Later that month, Jennifer left Arizona to attend

¹The father, whose rights to Zaiden were also terminated, is not a party to this appeal.

a truck-driving school in Utah, leaving Zaiden with friends she had known for only three months and who had a history with CPS. The Arizona Department of Economic Security (ADES) filed a dependency petition alleging Jennifer was unable to parent Zaiden due to neglect, medical neglect, and failure to protect. ADES took custody of Zaiden and placed him with Jennifer's father, with whom Jennifer has a poor relationship. When Jennifer left Arizona, she failed to provide her CPS case worker with any new contact information.

¶4 In June 2008, Jennifer submitted to the dependency petition and the juvenile court adjudicated Zaiden dependent as to her. ADES offered Jennifer services including child care, counseling, parenting classes, and a substance-abuse assessment to work toward the case-plan goal of family reunification, but she “out-and-out refused” to participate in the proffered services. Jennifer subsequently informed CPS she was moving to Georgia, but failed to contact CPS or the Department of Developmental Disabilities (DDD)² from July 2008 until early 2009. At various times since April 2008, Jennifer has lived in Arizona, Utah, and Indiana. She moved to Illinois in October 2008, but did not contact CPS until January 2009, the same month she gave birth to another child in Illinois. Jennifer did not have any contact with Zaiden for approximately one year.

¶5 The most recent case-plan goal of family reunification and severance and adoption was changed to severance and adoption in October 2009. In November 2009, at

²In November 2008, after he was diagnosed with cerebral palsy, Zaiden's case was transferred to the Department of Developmental Disabilities.

the juvenile court's direction, ADES filed a motion to terminate the parents' rights, alleging Jennifer had abandoned Zaiden; he had been in a court-ordered, out-of-home placement for nine months or longer and fifteen months or longer; and termination was in his best interests. A contested termination hearing was held in January 2010.

¶6 At the hearing, DDD case worker Manuel Santos testified Jennifer had failed to provide reasonable support for Zaiden, had not maintained regular contact with him, and had demonstrated a purpose to abandon him. Santos also noted that, although Jennifer had shown a recent "exuberance" to participate in services, she had not documented the few services she claimed to have started, and her overall compliance with her case plan was "zero." Santos opined it would be futile to continue to offer services to her. Jennifer testified that she did not see Zaiden after she moved to Illinois because she did not know how to contact her case worker or Zaiden. She admitted, however, that she did not tell the juvenile court about this concern at the prior hearings she attended by telephone. Santos testified that in February 2009 he initiated paperwork for the Interstate Compact on the Placement of Children (ICPC), a necessary step for Jennifer to receive services in Illinois. *See* A.R.S. §§ 8-548 through 8-548.06. Santos also testified that he had given Jennifer suggestions for obtaining services in Illinois while the ICPC process was pending. The court terminated both parents' rights in February 2010.

¶7 On appeal, Jennifer claims there was insufficient evidence to support the juvenile court's finding that ADES had made diligent efforts to provide her with appropriate reunification services. She does not otherwise challenge the sufficiency of

the evidence supporting the court's finding on the out-of-home placement ground. Jennifer contends ADES failed to request that she receive services in Illinois or to forward the appropriate paperwork to make this happen, apparently asserting that she would have benefitted from appropriate services if they had been provided. Before terminating a parent's rights pursuant to § 8-533(B)(8), "the agency responsible for the care of the children is under a statutory and a constitutional obligation to make reasonable efforts to reunify the family." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 37, 152 P.3d 1209, 1216 (App. 2007). Although ADES must give a parent the time and opportunity to participate in programs designed to improve the parent's ability to care for his or her child, *see Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 37, 971 P.2d 1046, 1053 (App. 1999), it is not required to provide every conceivable service or ensure that a parent participates in each service offered, *see In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nor is ADES required to provide services that would be futile. *See Mary Ellen C.*, 193 Ariz. 185, ¶ 34, 971 P.2d at 1053.

¶8 In its ruling terminating Jennifer's parental rights, the juvenile court noted it had considered and weighed all of the testimony and exhibits, including the arguments of counsel, and then found:

The child is being cared for in an out-of-home placement under the supervision of the juvenile court and the Department. The child has been in an out-of-home placement for a cumulative total period of nine months or longer, pursuant to court order. The Department has made a diligent effort to provide appropriate reunification services. The mother . . . has been offered the following services or told by

ADES to obtain the following services in the State of Illinois; ICPC [Interstate Compact on the Placement of Children], child care, counseling, parenting classes, and a substance abuse assessment. . . . This Finding is supported by the credible testimony of the case manager, Manuel Santos; the court reports dated March 27, 2009 . . . May 14, 2009 . . . October 26, 2009 . . . and October 30, 2009; and the testimony of the placement/grandfather . . . as to the mother. The parents have substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

¶9 Based on the facts previously set forth in this decision, there was more than sufficient evidence to support the juvenile court’s finding that ADES had made reasonable efforts to provide appropriate reunification services to Jennifer. This is particularly true given that Jennifer did not maintain contact with ADES for much of Zaiden’s life and that she refused to participate in services offered or recommended while she was in Arizona. *See Maricopa County No. JS-501904*, 180 Ariz. at 353, 884 P.2d at 239 (ADES not required to ensure parent participates in each service offered to show it made diligent effort to provide appropriate reunification services). Moreover, throughout the dependency, the court repeatedly found ADES had made reasonable efforts toward reunification, findings Jennifer apparently did not challenge. “We are mindful that our function on review is not to reweigh the evidence before the juvenile court or supersede its assessment of the evidence with our own.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004). Because sufficient evidence supports the court’s determination under § 8-533(B)(8)(a), we need not address Jennifer’s argument regarding abandonment. *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205 (appellate court

need not consider challenge on alternate grounds for severance if evidence supports any one ground).

¶10 Finally, Jennifer challenges the juvenile court's determination that termination of her parental rights was in Zaiden's best interests. To sustain its burden of establishing termination is in a child's best interests, ADES must prove by a preponderance of the evidence that the child either would benefit from the severance or be harmed if the parental relationship continued. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004); *see also Kent K.*, 210 Ariz. 279, ¶ 22, 110 P.3d at 1018 (best interests to support termination of parental rights established by preponderance of evidence).

¶11 There was more than sufficient evidence to support the juvenile court's best interests finding. The grandfather testified he is committed to adopting Zaiden and he is able to provide for his special needs. Santos similarly testified that the grandfather had demonstrated he was able to meet Zaiden's needs and that, even if the grandfather did not adopt him, Zaiden is an adoptable child. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (juvenile court could consider whether current adoptive placement existed, whether child adoptable, or whether existing placement meeting needs). Notably, Santos also testified that Jennifer's past decisions regarding Zaiden's care were not in his best interests, and that Zaiden would benefit from having Jennifer's rights severed so he could be placed in a "forever home" where he would have attention, love, nurturing care, security, and stability. Santos further testified

that Zaiden had bonded to his grandfather, and that he would be harmed if Jennifer's rights were not terminated.

¶12 For all of the foregoing reasons, we affirm the juvenile court's order terminating Jennifer's parental rights to Zaiden.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge